HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.558 of 2007

Between:

Government of Andhra Pradesh rep. by its Secretary, Department of Roads & Buildings, Hyderabad and others

… Appellants

And

Pavuluri Satyanarayana and another

… Respondents

:: J U D G M E N T ::

Counsel for the appellants : Assistant Government Pleader for Transport, Roads & Buildings

Counsel for respondent No.1 : Shri G. Ramakrishna

July 06, 2007

Per G.S. Singhvi, CJ

This appeal is directed against order dated 26.04.2007 passed by the learned Single Judge in Writ Petition No.24518 of 2005, whereby he allowed the writ petition filed by respondent No.1 and directed non-petitioner Nos. 1 to 4 (the appellants herein) to release the Earnest Money Deposit (EMD) made by him at the time of award of contract to operate toll gate near bridge constructed on Swarnamukhi river on Puthalpet-Naidupet road.

A perusal of the record shows that as a part of the contract awarded to him, respondent No.1 deposited Rs.22,20,000/- as EMB in the form of bank guarantee. The term of contract ended on 31.03.2006,

but his EMD was not released on the basis of some communication received from the Registration Department that there was some deficiency of stamp duty on the lease deed.

Respondent No.1 questioned the non-release of EMD mainly on the ground that the so-called deficiency of the stamp duty cannot be made a ground for withholding the EMD. He pleaded that before initiating action against him, the concerned authority of the Registration Department did not give him notice under Section 41-A of the Indian Stamp Act, 1899 (for short, 'the Act').

In the counter filed on behalf of the official respondents, it was pleaded that EMD was not released in view of the communication received from District Registrar, Tirupati that there was inadequate stamp duty on the lease deed and an order dated 17.12.2005 was passed determining the petitioner's liability.

The learned Single Judge allowed the writ petition by observing that Section 41-A of the Act cannot be invoked for withholding the EMD. Some of the observations made by the learned Single Judge are extracted below:

> " The purpose of requiring a contractor, or a lessee, who is awarded the government contract, to deposit EMD, is to ensure that the work entrusted to him is executed properly. The money, equivalent to any deficiency of performance of the work, is to be recovered from the EMD, at the end of the contract. The respondents could have withheld the EMD of the petitioner, either in its entirety, or in part, had they noticed and determined any deficiency, on the part of the petitioner. Admittedly, neither any deficiency, nor any defect, were attributed to the petitioner.
>
> Section 41-A of the Act comes into picture, when an authority conferred with power thereunder, verifies the records of a Registering Authority and finds some deficiency, as to calculation of stamp duty. The person, to whom the document is released, is to be issued a show-cause notice, pointing out the basis for arriving at the conclusion about the deficiency, as to stamp duty. Thereafter, it can entail a detailed enquiry and a

reasoned order. The aggrieved party is conferred with the right of appeal. Even where an order under Section 41-A of the Act is passed, strictly in accordance with the provisions of the Act, and the determination has become final, the amount involved in the matter has to be recovered, in the manner provided for under that Act, or at the best, by invoking the provisions of the Revenue Recovery Act. The Act does not confer any power on the authority, under Section 41-A, to attach or appropriate any amount due to the holder of the document, from any other source. Further, the communication relied upon by the respondents, is not referable to any provision. Therefore, there was absolutely no justification for the respondents, in withholding the EMD payable to the petitioner.

The arbitrariness, on the part of the respondents, is evident from the fact that though deficit stamp duty and registration charges are said to be about Rs.4,00,000/-, they withheld the entire amount of Rs.22,20,000/-. There is absolutely no justification for withholding the EMD, once the lease was successfully executed, in accordance with the terms thereof."

We have heard learned Assistant Government Pleader for Transport, Roads and Buildings, learned counsel for respondent No.1 and are convinced that the appeal is wholly meritless and is liable to be dismissed summarily. In our opinion, the learned Single Judge rightly concluded that Section 41-A of the Act cannot be invoked for withholding the EMD deposited by respondent No.1 at the time of award of contract. Section 41-A postulates issue of notice to the person to whom document is released for making good the deficiency of the stamp duty, if any. If the competent authority is not satisfied with the reply, then it can pass appropriate order for payment of the deficient stamp duty. Such an order is appealable. However, the facts of this case show that no notice was issued to respondent No.1 under Section 41-A. Therefore, that section could not have been relied for withholding the release of EMD.

With the above observations, the appeal is dismissed.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

July 6, 2007
ksld